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# HOPKINS & SUTTER

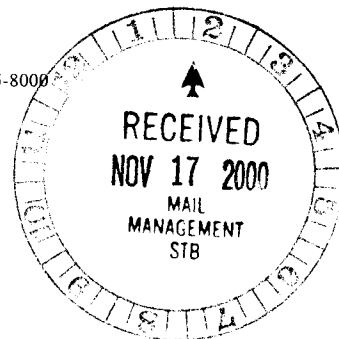
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November 17, 2000

The Honorable Vernon Williams  
Secretary  
Surface Transportation Board  
Case Control Unit  
Attn: STB Ex Parte No. 582 (Sub-No. 1)  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

**ENTERED**  
**Office of the Secretary**

**NOV 17 2000**

**Part of**  
**Public Record**

Re: STB Ex Parte No. 582 (Sub-No. 1)  
Major Rail Consolidations

Dear Secretary Williams:

Enclosed for filing in the above captioned docket are the original and twenty-five copies of the Comments of Metra.

Also enclosed with this letter is a diskette with the text of the Comments in WordPerfect 5.X format. Please date stamp the extra copy of this letter, and return it to us for our files.

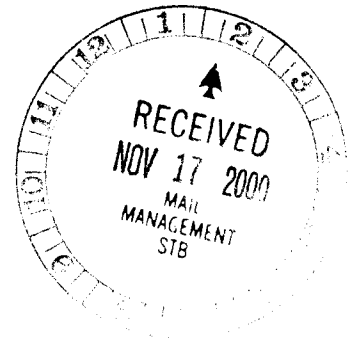
Sincerely,

Robert P. vom Eigen

RPV:dmo

2004/14

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
Washington, D.C.**



**ENTERED  
Office of the Secretary**

**STB Ex Parte No. 582 (Sub-No. 1)**

**NOV 17 2000**

**Part of  
Public Record**

**MAJOR RAIL CONSOLIDATION PROCEDURES**

**COMMENTS OF METRA**

The Commuter Rail Division of the Regional Transportation Authority of Northeast Illinois d/b/a "Metra", through its undersigned counsel, offers the following comments in response to the Board's notice of proposed rulemaking in this proceeding. *Major Rail Consolidation Procedures*, STB Ex Parte No. 582 (Sub-No. 1), Notice of Proposed Rulemaking, slip op. (served Oct. 3, 2000) (the NPRM). Metra commends the Board for defining commuter rail service as essential services that must be preserved in approving future proposed rail mergers. Metra also supports the Board's retention of jurisdiction during an oversight period as a way of addressing unforeseen problems resulting from merger implementation. However, Metra believes that the Board could strengthen and clarify its proposed regulations with regard to the consideration of commuter rail interests.

**Statement of Metra's Interest**

Metra is the commuter rail authority serving the Chicago metropolitan area, and it transports more than 300,000 passengers each business day in 703 trains serving 241 stations.<sup>1</sup> As stated in its comments in response to the Board's advanced

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<sup>1</sup> Metra operates 302 trains each Saturday and 176 trains on Sundays and holidays.

notice of proposed rulemaking filed on May 16, 2000 (Metra's ANPRM Comments), efficient and precise coordination of Metra's services with those of the freight railroads with which it shares operating corridors, joint facilities or junctions is absolutely essential for Metra to provide dependable service to these customers.<sup>2</sup> The rail mergers of the past five years have impacted Metra's operations, and it has participated in many of those merger proceedings to voice its concerns.

### **Comments on the Proposed Regulations**

**1. Proposed § 1180.1(c)(2)(ii): Potential harm/harm to essential services.** The Board states that its new general policy is to:

ensure that essential freight, passenger, and commuter rail services are preserved. An existing service is essential if there is sufficient public need for the service and adequate alternative transportation is not available. The Board's focus is on the ability of the nation's transportation infrastructure to continue to provide and support essential services.

NPRM, slip op. at 15. Metra supports the broadening of the Board's focus on essential services to look at the entire transportation infrastructure, instead of just the rail network. *Id.* This new focus validates Metra's argument (Metra's ANPRM Comments at 4) that essential services include commuter operations.

**2. Proposed § 1180.1(d): Conditions.** The Board states that its proposed rule now reflects a "willingness to use [its] conditioning power to mitigate or offset all types of threatened merger harms to the public interest." NPRM, slip op. at 16. Metra requests that the Board confirm that this language means that harm to commuter rail service can be considered a harm to the public interest.

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<sup>2</sup> Additional information about Metra is included in its ANPRM Comments.

**3. Proposed § 1180.1(g): Oversight.** The Board proposes a formal oversight process for at least the first 5 years following merger approval. The Board would retain jurisdiction during this period to “impose any additional conditions it determines are necessary to remedy or offset unforeseen adverse consequences of the underlying transaction.” *Id.* at 19. As noted above, Metra supports this proposal. This oversight process would provide commuter rail authorities with an avenue other than a petition to reopen the merger proceeding, or a cause of action under a contract with the merger applicants, by which to address problems caused by merger implementation.

**4. Proposed §§ 1180.1(h) and 1180.10: Service assurance and operational monitoring.** The Board proposes to require merger applicants to file a service assurance plan that must include specific information on how “connecting railroads” across the new system will be affected by the transaction. *Id.* at 19. It then explains that the service assurance plan must discuss the “coordination of freight and passenger operations.” *Id.* at 20. Metra asks that the Board confirm that this requirement to discuss the coordination of freight and passenger operations will apply regardless of whether the commuter railroads that might be affected are connecting railroads, or even carriers regulated by the Board.

Furthermore, the Board proposes the following additional requirements:

If Amtrak or commuter services are operated over the lines of the applicant carriers, applicants must describe definitively how they will continue to operate these lines to fulfill existing performance agreements for those services. Whether or not the passenger services operated are over lines of the applicants, applicants must establish operating protocols that ensure effective communications with Amtrak and/or regional rail passenger operators in order to minimize any potential transaction-related negative impacts.

*Id.* at 35. While these requirements, if promulgated as proposed, would be helpful, Metra believes the Board should also explicitly require that merger applicants

specifically consider problems that might arise at junction points on the commuter operator's system as well as at junction points on lines owned by applicants, and establish remedial measures to alleviate these problems. For instance, even though Metra negotiated agreements with CSX Transportation, Inc. and Norfolk Southern Railway to avoid adverse impacts from the Conrail split up, its commuter trains experienced increased delays at one junction point following the split-up. It would have been helpful for CSX and NS to have forecasted how their operations would impact that junction point so that the problem could have been mitigated or avoided altogether.

Also, as suggested in its ANPRM Comments (at 1, 5-6), Metra believes that the Board should require merger applicants to consult with commuter authorities prior to filing a rail merger application. While it might be implicit in the requirement to file a service assurance plan that the applicants consult with commuter authorities so that they can discuss the coordination of freight and passenger operations in their plan, § 1180.10 as proposed does not clearly provide this – yet it should.

Again, during the period between the pre-filing notification required under § 1180.4(b) and the filing of the application, applicants should be required to consult with local commuter rail authorities that operate trains on shared right of way or at junctions with a party to the transaction. The purpose of this consultation is to review the preliminary results of the traffic analysis and the preliminary operating plan being devised for the terminal area where the commuter authority operates. If there are system-wide changes, such as a reorganization or consolidation of dispatching centers, those too should be reviewed with the commuter authority during this consultation. If changes in the supervisory personnel within the transportation departments of the consolidating carriers are possible, the applicants should at this

stage agree to prepare and review with commuter authorities a transition plan that insures that supervisors experienced with specific commuter operations remain in control pending the training and orientation of their replacements. This should be a formal requirement where an applicant maintains a PSA arrangement with a commuter rail authority.

Addressing these and related issues in advance of the merger applicants' finalization of their operating plans would prove extremely valuable both to the applicants and the commuter rail authorities. Problems such as the one that Metra experienced as a result of the Conrail split-up might be avoided if merger applicants conduct additional pre-implementation planning and are required to adhere to this planning following implementation. Commuter authorities should not be forced into an adversarial role when advance consultation could eliminate sources of conflict and could, in fact, enhance the relationship of the merger applicants and the commuter railroads. Consultation need not be extensive or burdensome. As Metra previously suggested, applicants can reflect their compliance with the consultation requirement either by attaching a statement of support from the authority or a certificate documenting their consultation efforts.

**5. Proposed § 1180.6(b)(11): Calculating public benefits.** The Board proposes to require merger applicants to enumerate and quantify the public benefits of their proposed merger. Applicants would also be required to quantify the likely negative effects of merger approval, such as the potential for service disruption. Further, the Board proposes to require applicants to suggest additional measures that the Board might take if the "anticipated public benefits . . . fail to materialize in a timely manner." NPRM, slip op. at 31. All of these requirements can be read as an obligation to account for how the merger will impact commuter rail operations. These

requirements also appear to create incentives for applicants to improve commuter operations on their lines, and to promote improved commuter service as a public interest benefit of the transaction. Metra asks the Board to confirm that these interpretations of proposed § 1180.6(b)(11) are correct.

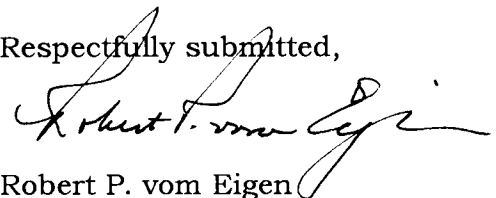
**6. Proposed § 1180.7: Market analyses.** For both major and significant merger transactions, applicants would be required to submit impact analyses on the provision of essential services. For major transactions, applicants would also be required to file a "full system" impact analysis demonstrating the anticipated impacts on the provision of essential services, specifically including passenger and commuter services. Applicants must include specific measures proposed to preserve existing levels of essential services. *Id.* at 32-33. Metra agrees with these proposals.

### **Conclusion**

Metra supports the steps that the Board has taken to update its rail merger consolidation rules to reflect the importance of commuter rail service to our nation's transportation infrastructure. However, Metra believes that the further measures outlined above can ensure that rail mergers will not adversely impact essential commuter rail service.

Michael Noland  
General Counsel  
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Respectfully submitted,



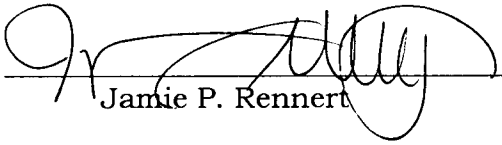
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Jamie P. Rennert  
HOPKINS & SUTTER  
888 16<sup>th</sup> Street, N.W.  
Washington, D.C. 20006  
(202) 835-8000

Counsel for Metra

Dated: November 17, 2000

# **CERTIFICATE OF SERVICE**

I hereby certify that on this day of November 17, 2000, I served copies of the foregoing Comments of Metra upon all parties of record in this proceeding, by first class mail, postage prepaid.

  
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Jamie P. Rennert